

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BLUE BELL INN, INC.	:	CIVIL ACTION
Plaintiff	:	
	:	
v.	:	
	:	
ANDREW KAMARATOS and	:	
AGGI, L.P., d/b/a BLUE BELL DINER,	:	
Defendant	:	No.: 02-CV-4068

**ORDER**

AND NOW, this                      day of                      , 2002, upon motion of Defendants Andrew Kamaratos, AGGI, L.P., and Blue Bell Diner, it is hereby ordered that said defendants are granted leave to file an amended answer to the complaint, on or before                      , 2002.

BY THE COURT:

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FULLAM, C.J.E.

IN THE UNITED STATES DISTRICT COURT  
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AGGI, L.P., d/b/a BLUE BELL DINER,	:	
Defendant	:	No.: 02-CV-4068

**MOTION FOR LEAVE TO AMEND ANSWER TO COMPLAINT**

Defendants Andrew Kamaratos and AGGI, LP, d/b/a Blue Bell Diner, by counsel, respectfully move the Court for leave to submit an amended answer to the complaint herein. In support of their motion, defendants rely upon the attached memorandum.

Respectfully submitted,

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ANNE M. DIXON  
Attorney for Defendants

31<sup>st</sup> Floor, Lewis Tower Building  
225 South 15<sup>th</sup> Street  
Philadelphia, PA 19102  
215-735-5900  
215-735-4649 (fax)

Dated: October 1, 2002

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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	:	
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AGGI, L.P., d/b/a BLUE BELL DINER,	:	
Defendant	:	No.: 02-CV-4068

**MEMORANDUM OF LAW**

An answer to the complaint was filed by former counsel<sup>1</sup> on September 9, 2002 and served upon counsel by electronic transmission on September 10, 2002. As a result, the time within which to file an amended answer as of right under Fed. R.Cv.P 15(a) expired yesterday. Thus, defendants seek leave of court to file an amended answer as permitted by Rule 15.

The necessity for an amendment is occasioned by the fact that, as a result of current counsel's investigation and review of this matter, it appears that the restaurant at 1324 Skippack Pike, Blue Bell, Pennsylvania, about whose appellation the plaintiff complains, is not operated by the defendants. See, e.g., Exhibit A.

As noted in Adams v. Gould, Inc., 739 F.2d 858, 864 (3d Cir. 1984), "Fed.R.Cv.P. embodies the liberal pleading philosophy of the

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<sup>1</sup>Undersigned counsel has undertaken the defendants' representation on this date. A Withdrawal of Appearance and Entry of Appearance will be filed with the Clerk as soon as the withdrawal is signed by former counsel.

federal rules. Under Rule 15(a), a complaint may be amended once as a matter of right and afterward by leave of court, which is to be freely granted....The district court may deny leave to amend only if the plaintiff's delay in seeking amendment is undue, motivated by bad faith, or prejudicial to the opposing party." (citations omitted).

As noted above, the request for leave to amend is being made only one day outside of the period in which an amendment could have been filed as of right, arises simply by virtue of new counsel's review of this matter, and is not in any way motivated by bad faith. Further, given that the amendment will serve to notify the plaintiff that it may not have instituted its action against proper parties defendant, the plaintiff is benefitted and not prejudiced.

Accordingly, Defendants respectfully request leave to file an amended answer to the complaint in the form substantially attached hereto as Exhibit B.

Respectfully submitted,

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ANNE M. DIXON  
Attorney for Defendants

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Defendant	:	No.: 02-CV-4068

**CERTIFICATIONS**

**1. Concurrence/Non-Concurrence**

Counsel was unable to reach counsel for plaintiff to obtain plaintiff's position with respect to this motion.

**2. Service**

A copy of the foregoing Motion was forwarded to counsel for plaintiff Frank J. Benasutti, Esquire, One Boca Commerce Center, 551 N.W. 77<sup>th</sup> Street, Suite 111, Boca Raton, FL 33487 by facsimile and first class mail on this date.

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ANNE M. DIXON  
Attorney for Defendant  
ANDREW KAMARATOS, AGGI, L.P.  
d/b/a BLUE BELL DINER

Dated: October 1, 2002